



# Commonwealth of Massachusetts

## State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108  
phone: 617-727-0060, fax: 617-723-5851



Senator W. Paul White  
c/o Thomas Dwyer, Esquire  
400 Atlantic Avenue  
Boston, MA 02110

### **PUBLIC ENFORCEMENT LETTER 95-1**

Dear Senator White:

As you know, the State Ethics Commission has conducted a preliminary inquiry into allegations that as a state senator you violated G.L. c. 268A by accepting items of substantial value from John Hancock Mutual Life Insurance Company ("Hancock") and others. Based on the staff's investigation (discussed below), the Commission voted on January 27, 1994 that there is reasonable cause to believe that you violated G.L. c. 268A, §23(b)(3). In view of certain mitigating circumstances (also discussed below), the Commission, however, has determined that further proceedings are not warranted. Rather, the Commission has concluded that the public interest would be better served by disclosing the facts revealed during our inquiry and explaining applicable provisions of the law, with the expectation that this will insure both your and other legislators' future understanding of and compliance with the conflict law. By agreeing to this public letter as a final resolution of this matter, you do not admit to the facts and laws discussed below. The Commission and you have agreed that there will be no formal action against you, and that you have chosen not to exercise your right to a hearing before the Commission.

#### **I. Facts**

1. You were a state representative between 1973 and 1988. In November 1988, you were elected to the State Senate. You have served in the Senate from January 1989 to the present.
2. As a state senator, you have served on the following committees: Banks and Banking, 1989 to the present (chair, 1991 to the present); Public Service, 1989 to the present; Ethics, 1989 to the present; Criminal Justice, 1989 to the present; Post Audit and Oversight, 1989 to the present (vice-chair, 1989 to the present).
3. In addition, as a member of various committees, you have participated in hearings on bills of interest to the insurance industry. Such participation has included voting on whether such bills should be reported out of committee. You have also voted on bills of interest to the insurance industry when they reached the Senate floor.
4. As a state senator, you have co-sponsored several bills affecting the insurance industry.
5. Hancock, a Massachusetts corporation, is the nation's sixth largest life insurer doing business in all 50 states. Hancock offers an array of life, health and investment products. As a Massachusetts domiciled life insurer, Hancock's activities are more comprehensively regulated by Massachusetts than by any other state.
6. Hancock has a Government Relations Department whose responsibilities include monitoring Massachusetts legislation of interest to Hancock and presenting Hancock's position on such legislation to legislators.
7. According to the Government Relations Department's yearly internal reports, between 1985 and 1993, it identified, on average, approximately 125 bills filed each year with the Massachusetts legislature deemed to be of interest to Hancock. During those same years, on average, approximately 10 such bills were enacted into law each year.

8. Edward Baud (“Baud”) has worked in Hancock’s Government Relations Department since 1967. Basically, his job has been to act as a Hancock lobbyist regarding state legislation outside of Massachusetts in which Hancock has an interest. He is not a registered lobbyist in Massachusetts. According to his testimony, he has not attempted to promote, oppose or otherwise influence legislation in Massachusetts with anyone.

9. As a part of his duties, Baud, for many years, has regularly attended Council of State Governments (“CSG”) meetings in various parts of the United States. The CSG is a private, non-profit organization consisting of representatives from both the legislative and executive branches of the 50 state governments. It is supported primarily from dues paid by each of the 50 states. However, it also receives some corporate sponsor dues as well. For several years, Hancock has been a CSG private sector associate, paying \$3,000 in annual dues. Baud is Hancock’s primary representative to the CSG.

The CSG holds national and regional meetings. The CSG occasionally deals with issues of interest to Hancock. Baud has found speakers from the insurance industry to address insurance issues of interest to the CSG. According to Baud, it serves Hancock’s interests to maintain awareness of what issues are of importance to the CSG membership, and to try to have some input regarding those issues which are of importance to Hancock. However, the CSG does not deal with any specific Massachusetts legislation.

10. You became involved in the CSG in the late 1970s. In the 1980s, you became an officer of the CSG Eastern Regional Conference Executive Committee. As such you attended most of the Eastern Regional Conference Executive Committee meetings.<sup>1/</sup> Because of your being on the Executive Committee, you also attended many national CSG events. You were elected national chair in 1990, and served through 1991. As chair, you went to many regional CSG meetings. Since 1991, you have served on the CSG Executive Committee and the CSG Governing Board.

11. Between January 1, 1988, and May 30, 1993, Baud paid for approximately \$3,000 in meals and/or beverage expenses for you and/or your spouse. Approximately \$2,600 of those expenses involved meals and/or beverages that occurred at or near the site of various CSG meetings or conferences. Although this entertainment was not part of the formal CSG conference agenda, it involved socializing with numerous other CSG participants from various states which took place separate from and in addition to the CSG functions.<sup>2/</sup>

In addition, near Christmas time in 1989, 1990 and 1992, the Bauds hosted you and your spouse at a dinner or brunch at the Ritz-Carlton in Boston. You and your spouse’s pro rata share of the cost of that entertainment was approximately \$150 in 1989, \$120 in 1990, and \$160 in 1992.

12. According to your testimony, you met Baud in the early 1980’s. You saw each other frequently at various CSG events throughout the 1980’s. On occasion, each of you would bring your spouse. Over the years, as a result of your frequent CSG interactions, the four of you gradually came to be close friends. You exchanged Christmas cards and ornaments. You frequently spoke to Baud on the phone about personal matters. Your spouses talked to each other about private matters as well. In March 1992, you and your wife entertained the Bauds at the Harvard Club at your expense. Otherwise, you did not pay for any significant entertainment expenses for the Bauds. (During the relevant time period, neither of you had been to the other’s home.)

You assumed that when Baud paid for your and your spouse’s meals and drinks at CSG conferences, Hancock was the ultimate source of the payment. Nevertheless, you did not view these expenses as motivated by business reasons, but rather motivated by friendship. As to the Ritz-Carlton meals, you assumed that Baud paid for those meals personally, although you never inquired as to the source of the payment. You believed that the reason Baud paid for these Ritz-Carlton meals was purely friendship.<sup>3/</sup>

13. According to Baud’s testimony, he described his relationship with you as a “good business, friendly relationship.” While at CSG conferences, he would socialize with you and other legislators. As he became more actively involved with the CSG, he began to build close relations with certain key CSG people such as you, and certain senators from Ohio and New York.

According to Baud, he entertained you because you were an active and important participant in CSG events, and not because you were a Massachusetts legislator.

He also began socializing with you outside of CSG activities. Once a year he and his wife got together with

you and your wife at the Ritz-Carlton. Hancock paid for these dinners because they advanced Baud's association with you as an active participant in the CSG. The dinners at the Ritz-Carlton were motivated, however, as much by friendship as business, according to Baud.

## **II. Discussion**

As a state senator, you are a state employee. As such, you are subject to the conflict of interest law, G.L. c. 268A.

Your receiving approximately \$3,000 in entertainment from Baud raises an appearance issue under G.L. c. 268A, §23(b)(3). Section 23(b)(3) prohibits a state employee from knowingly or with reason to know acting in a manner which would cause a reasonable person knowing all of the facts to conclude that anyone can unduly enjoy his favor in the performance of his official duties.<sup>4/</sup>

We begin our discussion by focusing on the approximately \$2,600 of that entertainment you received from Baud at or near CSG conferences. In the Commission's view, your acceptance of the \$2,600 in entertainment from Baud, knowing: (1) he was a Hancock lobbyist (even though not registered in Massachusetts); (2) that Hancock as a Massachusetts domiciled life insurer is particularly sensitive to regulation by Massachusetts; and (3) that there are numerous bills of interest to the life insurance industry filed each year; constitutes acting in a manner which would cause a reasonable person knowing these facts to conclude that Hancock can unduly enjoy your favor in the performance of your official duties.<sup>5/</sup> This is so even though you were not lobbied by Baud, and even though there is no evidence to indicate that you were ever unduly influenced in the performance of your official duties to favor Hancock's interest. Ultimately, accepting such entertainment creates an appearance problem of undue influence. Therefore, it appears that you violated §23(b)(3).<sup>6/</sup>

The \$430 in total Ritz-Carlton entertainment provided to you by Hancock through Baud is more troublesome. At first blush, it would not seem to be connected with CSG activities. Baud testified, however, that he saw these meals as part of his continuing effort to create a strong close personal relationship with you as a CSG official, and that he was also motivated by his friendship with you. In addition, you stated that your understanding was that the meals were provided out of friendship, and that, in fact, you were unaware that Hancock was paying for these meals; you thought Baud paid for them personally.

Although the issue is not free from doubt, the Commission concludes that the CSG connection and friendship do appear to be the motivating factors for the Ritz-Carlton meals.<sup>7/</sup> These Ritz-Carlton meals, however, create even more of an appearance problem under §23(b)(3) than do the \$2,600 in CSG-connected meals in that they did not take place at or near CSG conferences involving conference participants. Therefore, it appears that you violated §23(b)(3) by accepting this Ritz-Carlton entertainment.<sup>8/</sup>

## **III. Disposition**

Based on its review of this matter, the Commission has determined that the sending of this letter should be sufficient to ensure your understanding of, and your future compliance with, the conflict of interest law. Although the Commission is authorized to impose a fine of up to \$2,000 for each violation of G.L. c. 268A, the Commission chose to resolve this matter with a Public Enforcement Letter for the following reasons: (1) the entertainment expenses were from a non-Massachusetts lobbyist; and (2) both you and Baud were legitimate participants in CSG functions and most, if not all, of the expenses appear to have been motivated by your CSG role, rather than your legislative duties. We also note that you fully cooperated with the Commission throughout its investigation.

This matter is now closed.

**DATE: July 19, 1994**

<sup>1/</sup> On at least three occasions, Baud met with you and other CSG people to help plan Eastern Regional Conference sessions that were to be held in Boston.

<sup>2/</sup> You testified that you considered this entertainment as an extension of the conference and that the gatherings provided an opportunity

for you and other conference participants from across the nation to discuss conference topics as well as exchange information on other issues of common interest among the CSG participants.

<sup>3/</sup> There is no evidence that the Bauds ever paid personally for any entertaining of you and/or your wife.

<sup>4/</sup> Section 23(b)(3) goes on to provide, “it shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such conclusion.”

<sup>5/</sup> You could have avoided the appearance problem by making a written disclosure pursuant to §23(b)(3).

<sup>6/</sup> It appears that the motive for this entertainment was some mixture of friendship and a desire on Baud’s part to deal with you as a CSG official. Had the Commission determined that you understood that Baud’s gifts were motivated in part for or because of an official act performed or to be performed by you as a state senator, the Commission would have found that you violated G.L. c. 268A, §3, a more serious violation. (Section 3 prohibits a state employee from accepting an item of substantial value for or because of official acts or acts within his official responsibility performed or to be performed by him.)

<sup>7/</sup> Again, that Baud was not a registered Massachusetts lobbyist and did not apparently seek to influence you regarding any specific Massachusetts legislation are important in so concluding.

<sup>8/</sup> Your argument that you were under the impression that Baud was paying for these meals privately is not a defense. Section 23(b)(3) has a “know or reason to know” standard. In the Commission’s view, you should have known that Hancock was paying, since (1) these were expensive meals at the Ritz-Carlton; (2) you knew Baud was a Hancock employee, and more particularly a Hancock lobbyist; and (3) you knew it would be relatively easy for Baud to justify such a dinner as a business expense. Indeed, you knew that on many prior occasions Hancock, through Baud, had paid for your and your wife’s meals when he and his wife socialized with you and your wife at or near CSG functions.